

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)
TIME AND MATERIAL/LABOR HOUR CONTRACT TYPE
SUPPLEMENTAL PROVISIONS

October 30, 2012

Revision 2

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DEFINITIONS

Whenever used in this document, the following definitions shall apply unless the content indicates otherwise.

Authorized Procurement Representative – The term “authorized procurement representative” shall be a person with authority to enter into and administer Subcontracts and make related determinations and findings. These individuals are identified with the associated authority in the body of the Subcontract.

Buyer’s Technical Representative (BTR) – The term “Buyer’s Technical Representative (BTR)” means the individual responsible for providing technical direction to the SUBCONTRACTOR. The BTR does not possess any explicit, apparent or implied authority to modify Subcontract terms and conditions.

BUYER – The term “BUYER” means Washington River Protection Solutions, LLC (WRPS).

Government – The term “Government” shall mean the United States of America and includes the U.S. Department of Energy (DOE) Office of River Protection (ORP), or any duly authorized representative thereof, including the BUYER’s Administrative Contracting Officer (ACO).

Lower-Tier Subcontractors - The term “lower-tier Subcontractors” refers to companies or individuals with whom the SUBCONTRACTOR has purchase orders, subcontracts and rental agreements for materials or equipment, and other services not performed directly by the SUBCONTRACTOR under this Subcontract.

SUBCONTRACTOR – The term SUBCONTRACTOR refers to the company, person or organization, including all lower-tier Subcontractors, performing Work under this Subcontract.

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Subcontract – The term Subcontract shall mean this Subcontract or Purchase Order between the BUYER and the SUBCONTRACTOR including its terms, conditions, clauses, provisions, written direction and instructions, releases, and documents.

Work – The term “Work” includes all material, labor, tools, and all appliances, machinery, and transportation, necessary to perform and complete the Subcontract’s requirements, and such additional items not specifically indicated or described that can be reasonably inferred as required to complete the Subcontract.

ARTICLE 1.0 CONTRACT TYPE

1.1 Labor Hour

If identified and provided for in the body of this Subcontract, this Subcontract is a Labor-Hour contract type and direct labor hours are to be provided at specified fixed hourly rates that include wages, overhead, general and administrative expenses, other indirect costs consistent with the SUBCONTRACTOR’s established accounting practices and profit. No other direct costs (ODCs) will be reimbursed under this Subcontract.

1.2 Time and Materials

If identified and provided for in the body of this Subcontract, this Subcontract is a Time and Materials contract type. Labor and other direct costs (ODCs) will be reimbursed under this contract type. Direct labor hours will be provided at specified fixed hourly rates that include wages, overhead, general and administration, other indirect costs consistent with the SUBCONTRACTOR’s established accounting practices, and profit. “Hourly rate” means the rate(s) prescribed in the Subcontract for payment for labor that meets the labor category qualification of a labor category specified in the Subcontract. Reimbursable direct costs shall not include any costs arising for the letting, administration, or supervision of performance of the Subcontract, if the costs are included in the fully burdened hourly rates identified in the Subcontract’s Compensation Schedule (e.g. already included as an Overhead/G&A expense in the fully burdened hourly rate).

ODCs shall only be charged by the SUBCONTRACTOR if specifically identified and authorized by the BUYER’s authorized procurement representative at the time of Subcontract award or by amendment to the Subcontract. ODCs that will be reimbursed shall meet the following conditions under this contract type:

- ODCs must be allocable, allowable, and reasonable.
- ODCs include direct materials, subcontracts, purchases, and travel.
- ODCs, as used in this provision, are those materials which enter directly into the service provided, or which are used or consumed directly in connection with the furnishing of the end product.
- The SUBCONTRACTOR may apply a material handling and/or general and administrative expense to ODCs consistent with the SUBCONTRACTOR’s established accounting practices. The SUBCONTRACTOR profit or fee shall not be applied to ODCs.
- ODCs must be agreed to and incorporated into the Subcontract's Compensation Schedule.
- The SUBCONTRACTOR must have an established accounting system that accumulates the SUBCONTRACTOR's costs for this element. This ODC account must be exclusive of all other accounts and not be recovered in the fully-burdened hourly direct labor rate(s).

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- The BUYER will make payments to the SUBCONTRACTOR in amounts determined to be allowable by the BUYER's authorized procurement representative in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 in effect on the date of this Subcontract and the terms of this Subcontract.

To the extent able, the SUBCONTRACTOR shall obtain materials and services at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and obtain all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. Credit shall be given to the BUYER for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the SUBCONTRACTOR, or would have accrued except for the fault or neglect of the SUBCONTRACTOR. The benefits lost without fault or neglect on the part of the SUBCONTRACTOR, or lost through fault of the BUYER, shall not be deducted from gross costs.

ARTICLE 2.0 ORDER OF PRECEDENCE

In the event of a discrepancy among any of the Subcontract terms, conditions, clauses, provisions, written direction and instructions, and documents (collectively, the 'Subcontract'), the following order of precedence shall govern resolution: (i) authorized procurement representative's written Subcontract, amendments, directions, and instructions; (ii) Special Provisions; (iii) General Provisions; (iv) Supplemental Provisions, (v) Statement of Work ('SOW'); (vi) Technical Specifications; and (vi) Drawings.

Nothing recited above shall be construed as superseding or deleting any applicable statute, rule, ordinance, or regulation (collectively, the 'Laws'). In the event of a conflict with Laws, the specific conflicting term of the Subcontract shall be considered null and without effect, Laws shall govern. All remaining terms unaffected by said Laws should continue in force.

ARTICLE 3.0 TERMS OF PAYMENT

3.1 General Invoice Requirements

- A. Invoice Submission Requirements: Original invoices and supporting documentation shall be submitted no more than once a calendar month to the BUYER's Accounts Payable organization at the address below:

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)
Accounts Payable/Mail Stop: H6-09
P.O. Box 850
Richland, WA 99352
Email electronic invoices to: WRPSAPINVOICES@rl.gov

- B. Invoice Payment Terms: The SUBCONTRACTOR shall prepare all invoices in a form satisfactory to and approved by the BUYER's authorized procurement representative. Except to the extent expressly stated elsewhere in this Subcontract, the invoice is payable thirty (30) calendar days after receipt by the BUYER of a properly marked and submitted invoice. Discounts are expected for earlier payments and shall be specifically incorporated in the Subcontract. All unit pricing and payments made shall be in United States dollars only, in the forms of cash, check or electronic transfer as may be agreed upon. Remittance will be made only to the remittance address on file for the SUBCONTRACTOR. Invoices from third parties or with different remittance instructions or addresses will not be processed. Invoices may be submitted electronically, if in an acceptable format. All invoice requirements still apply to electronic invoices.

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- C. Invoice Certification: Submittal of an invoice constitutes the SUBCONTRACTOR's certification that materials, work and/or services have been delivered as specified on the invoice in accordance with the Subcontract.
- D. Separate Invoice Requirements: Each Subcontract or Subcontract Release shall be invoiced separately.
- E. Minimum Invoice Requirements: The invoice shall identify the following information:
- The SUBCONTRACTOR's name, invoice number, and Subcontract number, and Release number.
 - The SUBCONTRACTOR's name and telephone number of a representative available to respond to invoice questions.
 - The total amount due for the billing period (this amount shall be separate from cumulative amounts or subtotals included on the invoice).
 - A cost summary identifying all cost elements being invoiced with all indirect cost (rate) allocations clearly identified.
 - A synopsis of services performed during the billing period.
 - A listing of ODCs invoiced that reconcile to the Subcontract's Compensation Schedule with supporting documentation as required by the authorized procurement representative.
 - A corresponding description of each item billed and the associated amount.
 - Invoices that include a total freight charge that is equal to or greater than one hundred dollars (\$100) must include a copy of the freight bill. If the carrier is UPS, the SUBCONTRACTOR must provide the weight, quantity, and shipping point.
- F. Fully-Burdened Hourly Rate: Unless specified otherwise, the invoiced amount shall be computed by multiplying the appropriate hourly rate prescribed in the Subcontract's Compensation Schedule by the number of direct billable labor hours. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.
- G. Time Sheets: To expedite payment for services, time sheets for the SUBCONTRACTOR employee(s) shall be submitted to the Buyer's Technical Representative (BTR) prior to leaving the job unless this requirement is waived by the BUYER's authorized procurement representative or by specific language in the Subcontract's Special Provisions. The BTR shall acknowledge on the time sheet receipt of Work for the period covered by the time sheet. Time sheets shall be formally approved by the SUBCONTRACTOR. One copy of the approved time sheet is to be attached to the invoice when presented for payment to the BUYER.
- The BUYER's authorized procurement representative will only reimburse the SUBCONTRACTOR for direct productive labor hours associated with the Subcontract's or Subcontract release's Statement of Work (SOW). Reimbursement for travel time (airline or other than airline) to the job-site is not considered a direct productive labor hour and will not be reimbursed by the BUYER's authorized procurement representative.
- H. Identification of Uncompensated Overtime: Uncompensated overtime means the hours worked without additional compensation in excess of an average of forty (40) hours per week by direct charging employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

The SUBCONTRACTOR's reporting of uncompensated overtime must be consistent with its established accounting practices and policies used to accumulate and report uncompensated overtime hours.

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- I. Rejection of Invoices: Any invoice submitted, which fails to comply with the terms of this Subcontract, including the requirements of form and documentation, may be returned to the SUBCONTRACTOR. Any costs associated with the resubmission of an invoice to meet these requirements shall not be reimbursed by the BUYER.
- J. Withholding Invoice Payments: The BUYER may, at its sole discretion, withhold payment due for, but not limited to, the following reasons:
- Substandard Work or delays in the Work not corrected promptly.
 - Evidence that a claim has been or will be filed against the SUBCONTRACTOR.
 - Evidence that lower tier Subcontractors or suppliers have not been properly paid.
 - Failure to provide accrual reports by the 15th of each month as specified in the Subcontract provisions.
- K. Accruals: This provision applies to all Subcontracts unless the Subcontract is for one-time work which will be billed during the month the work was performed. The SUBCONTRACTOR shall provide monthly to BUYER's Accounts Payable an estimate of the total billable cost from inception of the Subcontract through the current calendar month end. This information must be provided electronically between the 12th and the 16th of each month using the login information contained in the SUBCONTRACTOR's confirmation email when the SUBCONTRACTOR completed its initial vendor registration with the BUYER. Accruals are submitted through the Vendor Registration System at <http://www5.hanford.gov/vendreg/>. Click on the accruals tab at the top of the screen and enter the current cost to date amount for the subcontract or release in the appropriate space. If you experience any technical difficulties, please contact us at wrps_procurement@rl.gov. Alternative methods are email, fax, or mail and must be submitted by the 16th of each month to the following address.

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)

ATTN: Accounts Payable / MSIN H6-09

P.O. Box 850

Richland, WA 99352

Email: awrps@rl.gov

Fax: (509) 372-8036

Monthly SUBCONTRACTOR cost to date forms can be obtained at the following link -- [Subcontractor Cost to Date Form](#).

Accrual data must be provided for each Subcontract or Subcontract release until all SUBCONTRACTOR invoices are received and Work is complete.

3.2 Reimbursement of Travel Expenses

When authorized as part of the Subcontract's or Subcontract Release's Statement of Work, the SUBCONTRACTOR will be reimbursed travel expenses incurred in performance provided that the expenses are for costs incurred for lodging, meals, and incidental expenses considered reasonable, allowable, and allocable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in Federal Travel Regulations (FTR) for travel within the forty-eight (48) states. The following are links for referencing the travel guidelines.

[Federal Travel Regulations](#)

Additional guidance can be referenced through the Joint Travel Regulations (JTR) for travel in Alaska,

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Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or the Standardized Regulations (SR) for travel allowances in foreign areas.

A per diem will be paid to SUBCONTRACTOR employees only who are assigned to a project site for twelve (12) months (365 days) or less. SUBCONTRACTOR employees assigned to a project for more than sixty (60) days will be expected to vacate hotel lodging and move into residential accommodations.

- A. Short-Term Assignments: Per diem and lodging will be paid in accordance with the rates established by the Federal Travel Regulations (FTR) unless otherwise specified in this Subcontract. Home visits for less than four (4) consecutive weeks of assignment (on travel status) are not authorized.
- B. Temporary Work Assignments (Sixty (60) Days or Less): Expenses associated with temporary work assignments that are sixty (60) days or less will be reimbursed under the following guidelines:
- Transportation Other than Airline: Reimbursement of transportation costs will be at the current Federal Travel Regulations (FTR) per mile rate, for travel made by automobile, or actual fares for other public conveyance, reasonably incurred by the SUBCONTRACTOR's personnel in traveling by the shortest and most direct route from his/her home office to (Hanford Site) Richland, Washington, or to other such locations and return, at the request of the BUYER. When travel is by automobile the most direct route shall be determined in accordance with the Rand McNally Standard Distance Chart. Local mileage costs while at the Hanford Site will not be reimbursed, unless specifically authorized by the BUYER's authorized procurement representative.
 - Transportation by Airline: Every effort shall be made to plan required travel to obtain the lowest fares available. Actual receipts must document all airfare costs being invoiced under this Subcontract.
 - Reimbursement of Labor Hours During Travel Status: The BUYER's authorized procurement representative will only reimburse the SUBCONTRACTOR for direct productive labor hours associated with the Subcontract's or Subcontract Release's Statement of Work (SOW). Reimbursement for travel time (airline or other than airline) to the job-site is not considered a direct productive labor hour and will not be reimbursed by the authorized procurement representative.
 - Car Rental: Intermediate size cars are to be used. Should an intermediate size vehicle not be available, use of a more expensive vehicle must include a certification by the employee of the effort made to obtain the intermediate vehicle. Actual receipts must document all car rental and fuel costs.
 - Lodging: Lodging will be reimbursed at the current FTR rate or at the actual cost if less than the allowable FTR rate. Actual receipts must document all lodging costs being invoiced under this Subcontract.
 - Meals and Incidental Expenses (M&IE): M&IE will be reimbursed at a flat rate per day; not to exceed the limits specified for the geographical location in the FTR. The daily living expense (M&IE) shall be prorated per the FTR during the first and last day of travel, inclusive of weekend trips home. Weekend stay-over(s) are paid when continued work is required during the following week.
- C. Temporary Work Assignments – More Than Sixty (60) Days, But Less Than Three Hundred Sixty-five (365) Days: Effective the sixty-first day of the work assignment, the following modifications become effective: the BUYER will pay a reduced per diem rate of thirty dollars (\$30) per day to compensate lodging/subsistence expenses. Receipts will not be required for lodging/subsistence while under the reduced per diem rate allowance.

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- Instead of using a rental car, a SUBCONTRACTOR owned vehicle may be used if determined to be more cost effective. However, shipping cost and arrangements must be pre-approved by the BUYER's authorized procurement representative. The BUYER assumes no liability for accidents when SUBCONTRACTOR owned or rental vehicles are used.
- One trip home, to the primary residence, after each four (4) consecutive weeks of assignment (on travel status) to the Subcontract will be reimbursed when approved in advance by the BUYER'S authorized procurement representative.
- Fourteen (14) day advanced coach airfare via the most direct route in accordance with FTR guidelines. If the project work assignment or an urgent situation prevents the SUBCONTRACTOR employee from obtaining the fourteen (14) day airfare; approval must be obtained from the BUYER's authorized procurement representative.
- If a personal vehicle is used to return to the primary residence, mileage and lodging will be paid at the current FTR rates, not to exceed the fourteen (14) day advance airfare rate.
- While traveling and at home, per-diem expenses are not reimbursable.
- The trips home are neither "bankable," transferable nor cumulative.

D. Work Assignments - Three Hundred Sixty-five (365) Days and Over: Unless pre-approved by the BUYER's authorized procurement representative, work assignments of more than three hundred sixty-five (365) consecutive days are considered permanent. Any incurred travel and living expenses, after three hundred sixty-five (365) consecutive days, are not reimbursable without written pre-approval from the BUYER's authorized procurement representative. This provision shall also apply to the SUBCONTRACTOR's employees who transfer to another Subcontract. The number of consecutive days for a transferred employee shall not restart with the new Subcontract but shall continue from the original Subcontract assignment date.

3.3 Cash Discounts

Cash discounts will apply from the date a correct, properly supported invoice is received by the BUYER.

3.4 Refunds

The SUBCONTRACTOR agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the SUBCONTRACTOR or any assignee, that arise under the materials portion of this Subcontract and for which the SUBCONTRACTOR has received reimbursement, shall be paid by the SUBCONTRACTOR to the authorized procurement representative.

3.5 Taxes

The SUBCONTRACTOR shall collect the applicable Washington State sales or use tax from the BUYER unless the SUBCONTRACTOR obtains a Direct Pay Permit from the BUYER's authorized procurement representative. All other Federal, State, county, municipal or other taxes not excluded by the Washington State Department of Revenue Direct Pay Permit must be included in the Subcontract amount. If as a result of this Subcontract, the SUBCONTRACTOR becomes eligible for Washington State Business and Occupation Tax Credit for Research and Development spending, the SUBCONTRACTOR shall take such tax credit and assign such tax credit to the BUYER. If the SUBCONTRACTOR applies for the Washington State Business and Occupation Tax Credit for Research and Development spending, the SUBCONTRACTOR shall notify the BUYER's authorized procurement representative. The SUBCONTRACTOR shall fully cooperate with the BUYER in any tax audits, tax assessment reviews, or tax challenges.

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3.6 Right to Offset

The BUYER, without waiver or limitation of any rights or remedies of the BUYER, shall be entitled from time to time to deduct from any amounts due or owing by the BUYER to the SUBCONTRACTOR in connection with this Subcontract (or any other Subcontract with the BUYER), any and all amounts owed by the SUBCONTRACTOR to the BUYER or the Government in connection with this Subcontract.

3.7 Interest Payment

No interest is payable to the SUBCONTRACTOR for any claim it may have, except that specifically imposed by a court of competent jurisdiction on any judgment, and then only in accordance with the terms of the judgment.

3.8 Audit

At any time before final payment under this Subcontract, the BUYER's authorized procurement representative may request audit of the invoices and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the BUYER's authorized procurement representative not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments.

3.9 Final Payment

Upon completion of the Work, the SUBCONTRACTOR will notify the BUYER's authorized procurement representative, in writing that the Work is complete and that final payment is due. The final invoice shall be clearly marked "FINAL PAYMENT" and submitted for reimbursement after completion and acceptance of Work by the BUYER and compliance by the SUBCONTRACTOR with all terms of this Subcontract. The final invoice shall be supported by all requested certifications and releases needed to close out the Subcontract including, but not limited to, the "Subcontractor Release of Claims." If the Work has been completed in accordance with this Subcontract, final payment will be made in accordance with the terms of this Subcontract. Final Payment shall not relieve the SUBCONTRACTOR of any obligation under this Subcontract.

3.10 Limitation of Funds (Ceiling Price)

- A. The Subcontract (or Subcontract release) specifies the dollar amount authorized, the items covered, and the period of performance the amount will cover. The SUBCONTRACTOR agrees to perform, or have performed, Work on the Subcontract up to the point at which the total amount paid and payable under the Subcontract, approximates, but does not exceed the total amount authorized on the Subcontract.
- B. When the parties have negotiated a total award value which exceeds current funding, the authorized funds on the resulting Subcontract will be limited using a limitation of funding provision.
- C. The authorized funding shall be considered a ceiling price which may not be exceeded until the BUYER's authorized procurement representative notifies the SUBCONTRACTOR in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Subcontract.
- D. The SUBCONTRACTOR shall notify the BUYER's authorized procurement representative identified in the Subcontract, in writing whenever it has reason to believe that the costs it expects to incur under this Subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed seventy-five (75) percent of the total amount so far allotted to this Subcontract. The notice shall state the estimated date when such allotted amount will be reached and estimated amount of additional funds required to continue performance for the period specified in the Subcontract. If after such notification, additional funds are not obligated by the end of estimated reach date or by an another agreed date, the BUYER's

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authorized procurement representative shall upon SUBCONTRACTOR's written request, terminate this Subcontract on the performance end date or the date set forth in the request, whichever is later, pursuant to the provisions of the Termination provision of this Subcontract.

- E. Except as provided by other provisions of this Subcontract, specifically citing and stated to be an exception to this provision, the BUYER's authorized procurement representative is not obligated to reimburse the SUBCONTRACTOR for costs incurred in excess of the total authorized funding; and the SUBCONTRACTOR is not obligated to continue performance under this Subcontract (including actions under the termination provision) or otherwise incur costs in excess of the allotted amount of this Subcontract, until the BUYER's authorized procurement representative notifies the SUBCONTRACTOR in writing that the allotted amount has been increased and specifies the revised total allotted amount.
- F. No notice, communication, or representation in any form or by anyone other than the authorized procurement representative shall affect the authorized amount of this Subcontract. In the absence of the SUBCONTRACTOR's notification as described above, the authorized procurement representative is not obligated to reimburse the SUBCONTRACTOR for any costs in excess of the total authorized funding, whether incurred during the course of performance period, a termination, or result of an audit.
- G. When, and to the extent that the amount authorized by the BUYER's authorized procurement representative is increased, any excess costs the SUBCONTRACTOR incurred before this amendment shall be allowable to the same extent as if incurred afterward, unless this Subcontract was terminated.
- H. Change orders (amendments) shall not be considered an authorization to exceed the estimated cost to the BUYER specified in the Subcontract, unless the change order (amendment) contains a statement increasing the Subcontract's estimated funding.

ARTICLE 4.0 WARRANTY*

The SUBCONTRACTOR warrants that all supplies and services provided under this Subcontract shall conform to the Statement of Work and/or specification included in this Subcontract. The SUBCONTRACTOR further warrants that all supplies provided as part of the Work shall be new, not refurbished or reconditioned; preserved, packaged, marked and prepared for shipment in a manner conforming to the requirements of applicable law and regulation and this Subcontract; and of an even kind, quality and quantity within each unit and among all units.

These warranty obligations shall survive for one (1) year after acceptance of the supplies or the completion of the Work performance hereunder unless a longer warranty period is called for in any writing including, without limitation, specifications, drawings or proposals furnished by or to the BUYER. The BUYER shall notify the SUBCONTRACTOR of any warranty claim within thirty (30) days after discovering the basis to raise such claim.

The SUBCONTRACTOR shall bear all costs and risk for correction or replacement of defective supplies or services, and in the case of supplies, for the cost of return of conforming supplies to the BUYER. Any of the supplies or parts thereof, corrected or furnished in replacement under this warranty provision, shall also be subject to the terms of this paragraph to the same extent as the supplies initially delivered. If replacement or correction is not completed promptly after notice of the defect or if a cure does not appear feasible, the BUYER shall have the right to either (i) obtain equivalent supplies or services from other sources (or to provide such supplies or services from internal sources) and to charge the cost thereof to the SUBCONTRACTOR or (ii) demand a refund of the funds paid by the BUYER for the defective supplies or services. At the BUYER's authorized procurement representative's request, the SUBCONTRACTOR shall provide a schedule for completing any proposed cure for defective supplies or services. Failure to provide a schedule within ten (10) working days shall be deemed grounds for the BUYER to exercise its rights under this provision.

If the SUBCONTRACTOR disputes the BUYER's warranty claim, the SUBCONTRACTOR shall nevertheless

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proceed to correct or replace the defective supplies or services. In the event it is later determined that the supplies or services were not defective, the BUYER shall equitably adjust the amount paid or to be paid under the Subcontract to compensate the SUBCONTRACTOR for the additional supplies or services provided, subject to offset for any conforming supplies returned by the BUYER.

The SUBCONTRACTOR shall provide instructions for pick up or disposal of defective supplies. Notwithstanding the provision entitled "Final Acceptance" hereof, title to, and risk of loss of, defective supplies that are returned for replacement or refund shall revert to the SUBCONTRACTOR upon notice of the defect. If the SUBCONTRACTOR fails to furnish timely disposition instructions, the BUYER may dispose of the defective supplies for the SUBCONTRACTOR's account in a reasonable manner. The BUYER is entitled to reimbursement from the SUBCONTRACTOR, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the defective supplies, as well as for excess costs incurred or to be incurred as a result of the breach of warranty. The rights and remedies of the BUYER provided in this paragraph are in addition to and do not limit any rights afforded to the BUYER by applicable law or any other term of this Subcontract.

Without limiting the SUBCONTRACTOR's liability under the warranties set out above, the SUBCONTRACTOR shall assign to the BUYER all manufacturer's warranties for supplies provided to the BUYER or other property acquired by the SUBCONTRACTOR at the BUYER's expense to which the BUYER takes title under the provision entitled "Final Acceptance" in the BUYER's general provisions.

ARTICLE 5.0 SUPPLEMENTAL TERMS AND CONDITIONS

General Intent: This agreement is subject to the terms and conditions of BUYER's Prime Contract Number DE-AC27-08RV14800. The general intent of these provisions is to incorporate into the purchase order or Subcontract all required Federal Acquisition Regulation (FAR) flow down clauses, and any other State or Federally-mandated Subcontract clauses, which are required to be so incorporated either by the FAR, BUYER's Prime Contract or the applicable State or Federal law.

To reference the cited FAR flow down clauses, the following link is provided -- [Hill Air Force Base FAR Site](#).

Substitution of the Parties: Wherever required to make any FAR clause incorporated herein meaningful, the term "Contractor" shall be read "Subcontractor," and the term "Government" or "Contracting Officer" shall be read "BUYER."

Specific Incorporated Clauses. Without in any way limiting, the following FAR clauses are hereby specifically incorporated herein by reference with the same force and effect as if they were given in full text.

5.1 Federal Acquisition Regulation (48 CFR Chapter 1) Clauses

Applicable to all orders:

1. FAR 52.201 Definitions (Jul 2004)
2. FAR 52.246-6 Inspection – Time and Material and Labor Hour (May 2001)